Supreme Court, U.S.
FILED

(1)

01 576 JUL 25 2001

No._____

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

WENDELL COOPER

PETITIONER,

V

BOARD OF EDUCATION OF MURPHYSBORO COMMUNITY UNIT SCHOOL DISTRICT NO. 186, JACKSON COUNTY, ILL. AND MICHAEL J. MUGGE, INDIVIDUALLY AND AS SUPERINTENDENT OF MURPHYSBORO COMMUNITY UNIT SCHOOL DISTRICT NO. 186

RESPONDENTS

CERTIORARI TO THE UNITED STATES OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Wendell Cooper, Pro Se
5520 Suncrest Court
Charlotte, NC 28215
(704) 563-0208

51 pp

QUESTIONS PRESENTED FOR REVIEW

1. Is it the responsibility of the Appeals Court to review all of the documents when deciding to grant summary judgment under federal civil procedure rule 56 and 28 U.S.C.A?

2. Is it necessary for the Appeals Court to establish that the applicants have met the minimum job requirement to determine if the plaintiff qualified for the position in cases involving unlawful employment practices?

3. Is it the responsibility of the Appeals Court to review the total record before granting summary judgment against the plaintiff?

4. Is it a legal standard for the Appeals Court to require that plaintiff prove that he or she is as qualified as the selected applicant is at the prima facie stage of the case to survive summary judgment?

5. Did the Appeals Court engage in a pattern of unlawful and unconstitutional actions when they failed to follow state statues for teacher certification?

6. Did the Appeals Court improperly apply the rules for a prima facie case when they failed to acknowledge documents that would be in favor of the plaintiff?

7. Did the Appeals Court fail to make the appropriate ruling, when Mr. Sullivan gave contradictory testimony in his deposition?

8. Did the Appeals Court fail to define what is legal proof of administrative and teaching credentials?

9. Did the Appeals Court deny Mr. Cooper a chance to prove his prima facie case, when they failed to establish if the applicants met the minimum job requirements?

10. Did the Appeals Court make an error in not reviewing the total records for the consideration of desperate treatment?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	i, ii
TABLE OF CONTENTS	iii, iv, v
TABLE OF AUTHORITIES	vi, vii
OPINIONS BELOW	1
BASIS FOR JURISDICTION	1
CONSTITUTIONAL, STATUTORY, REGULATOR PROVISIONS	i, vii
STATEMENT OF CASE	3
REASONS FOR GRANTING WRIT	4
I. JUDICIAL STATEMENTS	
A. The Appeals Court was wrong in upholding the District Courts decision that Mr. Cooper did not qualify for a type 75 administrative certificate because this certificate was not listed as a job qualification in the vacancy announcement	4

B. The Appeals Court failed to confirm whether Mr. Sullivan or Mr. Smith met the minimum requirements for the job as outlined by the job vacancy 6

C. The Appeals Court acted out of their scope of duty when they decided factual issues instead of deciding on issues of fact to be tried 10

D. The Appeals Court did not view the petition in the most favorable light of the party resisting of the motion 12

E. The Appeals Court failed to establish what quantified as legal documentation of Administrative and Teaching Credential 13

F. The Appeals Court based their ruling on subjective hiring criteria 15

II. CONCLUSIONS 16

APPENDIX

Orders of the Appeals and District Courts 17

Affirmation of Summary Judgment for the Respondent 1-A

Granting of Summary Judgment in Favor of Respondent 10-A
Constitutional, Statutory, and Regulations 11-A

TABLE OF AUTHORITIES

CASES

Byrnie v. Town of Cromwell Board of Education not filed (2nd Cir. 2001) 5

Gates v. Bea Associates 54 FEP. 650(SD New York 1990) Haines v. Kerner 404 U.S. 519-21, 92S ct. 594, 596,30l. Ed 2d. 652 (1972). 3

Jones v. Western Geophysical Co. Of America 669 F. 2nd reversed and remanded (5th cir 1982) 6

St. Mary's Honor Ctr. V. Hicks, 509 U.S. 502 6

Thomas v. Denny's, INC., affirmed in part and remand in part 111 F 3d 1506 (10th Cir 1997) 10

CONSTITUTION PROVISIONS

Amendment XIV 13

STATUES

Civil Rights (44)1 Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq. 10

The Illinois Complied Statutes School Code 105 ILCS 5/, (Article 21) Certification of Teachers) 11

FEDERAL RULES OF CIVIL PROCEDURES

56 § 2547 26-A
56 § 2544 26-A
56 § 2465 26-A
56 § 2523 27-A

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Petitioner herein prays that a writ of certiorari issue to the summary judgment of the United States Court of Appeal for the Seventh Circuit Court entered on April 26, 2001.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit Court is unreported, (99-3914 7th Cir April 26, 2001.

BASIS FOR JURISDICTION

The date of enter of judgment by the Court of Appeals was entered on April 26, 2001. The petition for a writ of certiorari was filed within the 90-day jurisdictional period as provided by Supreme Court Rule 13. The Court of Appeals had jurisdiction over this matter pursuant to 29 U.S.C § 1291. The Supreme Court jurisdiction arises under title 28. U.S.C to review the judgment of the Court of Appeals.

STATEMENT OF CASE

Mr. Cooper applied for an assistant principal's position on or about April of 1994 and upon being notified that he was not selected. Mr. Cooper filed a timely complaint with Equal Employment Opportunity Commission (EEOC).

Mr. Cooper received his right to sue letter from the EEOC and sought counsel to further his proceedings.

Mr. Cooper filed with the United States District court for the Southern District of Illinois for a violation of title VII of the Civil Rights Act of 1991, 42 U.S.C. § 2000e-2(A) (1) on or about April 1997.

The District Courts decision of summary judgment was entered on or about October 15, 1999.

After careful thought of decision rendered from District Court on or about October 15, 1999, Mr. Cooper decided to appeal the District Court's decision or about November 8, 1999.

Mr. Cooper filed a notice of appeal with the United State Court of Appeal for the Seventh Circuit on or about November 18, 1999.

Upon decision being rendered by United States Court of Appeals for the Seventh Circuit upholding the District Court decision. Mr. Cooper requested writ for his case to be heard in the United States Supreme Court.

REASON FOR GRANTING WRIT

I. JUDICIAL STATEMENT

A. The Appeals Court was wrong in upholding the District Courts decision that Mr. Cooper did not qualify for a type 75 administrative certificate because this certificate was not listed as a job qualification in the vacancy announcement.

The Appeals Court agreed with the District Court Ruling that petitioner failed to make out a prima facie case when he failed to meet the Type 75 Certificate required by the Murphysboro School District (MSD) to be consider for the position. As stated in petitioner's brief to the Appeals Court. Murphysboro School District required applicants to submit legal proof of administrative and teaching credential. Petitioner provided MSD with a legal copy of his administrative credentials from the state of Colorado that was never questioned by the respondents or by the District Court. Therefore, this is gross error by the court and prevented petitioner from meeting the second stage of the prima facie test. The court not only misapplied this standard, it also violated petitioner's rights under article XIV of the U. S. Constitution to due process of the law. Moreover, the respondent raises this non-factual issue as pretext to hide discrimination. Gates v. Bea Associates 54 FEP. 650(SD New York 1990), (if petitioner's contention is correct, respondent cannot avoid liability simply by pointing to that very requirement and arguing that he was not qualified for the position because he could not meet it).

Respondent has not given a legitimate nondiscriminatory reason for not adhering to job qualification as outlined in their job vacancy. Respondents relaxed the requirement from providing legal proof of administrative credentials for Mr. Smith and Mr. Sullivan to completing the course work to qualify for an Illinois type 75 certificate. This court has to raise some questions about the credibility of the selection process Gates v Bea Associates 54 FEP. 650 (SD New York 1990), (further goes on to say that under McDonnell Douglas, once the plaintiff has made out a prima facie case, the burden shifts to the employer to articulate some legitimate nondiscriminatory reason for the petitioner's rejection for the position sought. Since the burden cannot be met without resolving the factual issues above, the court must deny summary judgment in view of evidence in the light most favorable to the party resisting the motion)

B. The Appeals Court failed to confirm whether Mr. Sullivan or Mr. Smith met the minimum requirements for the job as outlined by the job vacancy

The Appeals Court stated that Mr. Sullivan and Mr. Smith were more qualified than Mr. Cooper based upon the subjective hiring criteria by Murphysboro School Districts screening committee.

The petitioner provided the Appeals court with a copy of Mr. Sullivan's transcript that showed that he had to take a class in the summer of 1994 in order to qualify for his Type – 75 Certificate. The interview stated on or about May 14, 1994, that Mr. Smith did not receive his certificate until on or about November 14, 1994, which was approximately 5 months lapsed before Mr. Sullivan could meet the minimum requirements for the job posted. Therefore, the Appeals Court was in error when they stated that Mr. Sullivan was two weeks away from receiving his certificate. Furthermore, it clearly disproves Murphysboro School Districts screening committee's statement that Mr. Sullivan completed all of his academic requirements prior to being interviewed.

The court was also provided with a copy Mr. Sullivan's affidavit to the Equal Employment Opportunity Commission in which he said that he orally applied for the position and in his submitted deposition, he testifies that he submitted the requested documents for the vacancy.

Unfortunately, MSD has lost Mr. Sullivan's application and did not provide these documents at the time of discovery or to the EEOC citing the same reason. Byrnie v. Town of Cromwell Board of Education not filed (2nd Cir. 2001). In borderline cases, an inference of spoliation, in combination with some (not insubstantial) evidence for the plaintiff's cause of action, can allow plaintiff to survive summary judgment.

The Appeals Court failed to review the record when petitioner provided the court with a copy of Mr. Smith's application, and noting that it was not signed until the date of the interview. This raises an important question as to whether the screening committee had the information needed to determine if Mr. Smith met the minimum job requirements prior to being interviewed for the position.

Mr. Smith is the black candidate who was offered the position, but later declined the position for personal reason according to the respondent.

However, there is not a letter from Mr. Smith stating that the above reasons are true. Mr. Smith relayed to Mr. Cooper in a personal conversation that he was not qualified for the position.

Thus, the petitioner believes that the hiring of Mr. Smith is a pretext to hide discrimination because, Mr. Smith was not qualified for the position and should have not been interviewed for the position as well as Mr. Sullivan the white candidate who accepted the position. Mr. Smith's application did not reveal that he could provide the MSD with legal proof of his administrative credentials. There is but one question left in this matter regarding Mr. Smith's role in the petitioner's attempt to prove a prima facie case. The Appeal's Court ruled that petitioner failed to meet the fourth stage of the prima facie theory (offered the position to an applicant that is not within his protected class). A genuine issue of fact was presented to the court explaining employer's motive and intent in not hiring a black applicant in favor of another black applicant. Mr. Smith was not qualified for the position based on the criteria outlined in the vacancy announcement, which the screening committee should have discovered during the screening of the applications. Jones v. Western Geophysical Co. Of America 669 F. 2nd reversed and remanded (5th cir 1982). When the applicant is not qualified for the

position, it does not relieve the respondent of liability, because applicant was not qualified.

This court has made it very clear that it did not intend to establish an exclusive prima facie test for discrimination in employment but rather recognized the need for the modification of the prima facie test depending on the nature of the case. St. Mary's Honor Ctr. V. Hicks, 509 U.S 502. Once defendant has proven parts 1-3 of prima facie test, one does not have to satisfy part 4, which states that the adverse employment decision was made under circumstance giving rise to an inference of unlawful discrimination.

As stated in Mr. Cooper's deposition, Mr. Smith informed petitioner that he was not qualified for the position and following this conversation petitioner decided to file a compliant with the EEOC.

The respondent's explanation for Mr. Smith and Mr. Sullivan not meeting the minimum qualifications was that they thought that they were qualified at the time they interviewed them, this is not acceptable, because when making a decision on whether the applicant for the job is qualified is an objective determination and not a subjective determination. The applicants have the job qualification, or they do not.

In order for an employer to rebut an employee's prima facie case of intentional discrimination under Title VII, employer must clearly set fourth, through the introduction of admissible evidence, the reason for its adverse employment decision and that reason must be legally sufficient to justify a judgment for the employer, Civil Rights Act of 1964, § 701 et seq., 42 U.S C.A § 2000e et seq. If the Appeals Court had reviewed the entire record as they were requested to do by law in reference to pro se cases, they would have discovered that the job vacancy required that the applicant submit legal proof of his administrative credentials. Thus said, the respondents did not meet this burden and the Appeals Court should not have affirmed the District Courts decision.

C. The Appeals Court acted out of their scope of duty when they decided factual issues instead of deciding on issues of fact to be tried.

When the Appeals Court failed to recognize the letter from the State Board of Education qualifying petitioner to be employed as a school administrator in the state of Illinois. When the Appeals Court said that Mr. Cooper was not qualified for the job as assistant principal because he did not hold a type 75 certificate. Mr. Cooper was not able to satisfy the

second part of his prima facie case, when the Appeals Court rendered the above decision, they became makers of law, instead of interrupters of law. We know that the power to make state laws resides with the Illinois State legislators. Justly, so, the State Legislators has selected the Illinois State Board of Education and has the sole legal authority to make decision about administrative certificate.

The Illinois Complied Statutes Schools, School Code 105 ILCS 5/, (Article 21. Certification Of Teachers) 105 ILCS 5/21-0.01, Section 21-01. Powers after January 1, 1998. Beginning of January 1, 1998 and thereafter, the State Board of Education in consultation with the State Teacher board, shall have the power and authority to do all of the following: (1) set standards for teaching, supervising, or holding other certificated employment in the public schools, and administer the certification process as provide in this; article; provided, however that the State Teacher Certification Board shall be solely responsible for the renewal of Standard Teaching Certificates a proved in Section 21-2 and 21-14 of this code. Based on this fact alone the petitioner has established a prima facie case, because there is no legal reason the Appeals Court can provide for violating the law in this particular matter. This is a very important fact and if true, respondent cannot

be relieved of their liability. Furthermore, Murphysboro School District does not have the authority to make this decision. Therefore, the respondents cannot provide legal explanation why they interviewed two candidates without the legal documentation verifying their administrative credentials.

D. The Appeals Court did not view the petition in the most favorable light of the party resisting of the motion

The respondent stated that they had some questions about petitioner's ability to qualify for a Type – 75 certificate and interviewed him anyway. This was a pretext to hide discrimination by allowing them to relax the posted job qualification to include Mr. Sullivan and Mr. Smith to be interviewed. As stated in the petitioner's deposition, he was informed about Murphysboro School District (MSD) concerns by his former high school principal Mr. Bowers. Petitioner addressed those concerns by providing MSD a copy of the letter petitioner received from Falcon School District # 49 that Mr. Cooper had two years of teaching experience

In this case, the respondent's reason is not acceptable and does not rebut the petitioner's

prima facie case of intentional discrimination because, the screening of applications to see if they meet the minimum job qualification is an objective not a subjective process. This means that the applicants either met the job qualification or did not meet the qualifications. In order to respond to Mr. Cooper's statement Murphysboro School District must submit copies of the legal documentation presented by Mr. Smith and Mr. Sullivan and these documents must be reviewed by the Appeals Court prior to affirming the District Court decision.

The Appeals Court failed to establish what qualified as legal proof of administrative and teaching credential. The Court did not have a factual background to make a ruling on this matter. In fact, the Appeals Court made a ruling against the petitioner based on qualifications that did not exist in the vacancy announcement.

E. The Appeals Court failed to establish what quantified as legal documentation of Administrative and Teaching Credential.

The court concluded that the applicant needed to have a Type 75 certificate in order to qualify for the position. They arrived at this conclusion because

Mr. Cooper stated that neither Mr. Sullivan nor Mr. Smith had a Type 75 certificate. Therefore, the Murphysboro School district decided to misrepresent the job qualification by saying that the certificate was part of the qualification for the position.

If the court had reviewed the job description, they would have discovered that the qualification read as follows: "Provide legal documentation of administrative teaching credentials."

Mr. Cooper provided the MSD with a copy of his administrative certificate from Colorado as proof of his administrative credentials. The certificate was not questioned by the Appeals Court or the respondents.

Mr. Cooper only referred to the type 75 certificate because Mr. Smith and Mr. Sullivan were enrolled in programs in the state of Illinois. Therefore, they would need to have a certificate from Illinois, which is the Type 75 certificate. As a result of the court not establishing the above criteria of what constitutes a legal documentation, the court ruled on a qualification that was not part of the job description. Based on this one fact alone, summary judgment should not have been granted.

F. The Appeals Court based their ruling on subjective hiring criteria

The Appeals Court ruled that Mr. Cooper admitted in his deposition that he had no knowledge of the teacher evaluation process. This is a false statement m ıde by the court. This petitioner can verify his knowledge of the teacher evaluation process through his academic record, which was not reviewed by the courts when they made this decision. Likewise, petitioner can address all Murphysboro School District subjective hiring criteria through education and experience as a teacher and coach. In Thomas v. Denny's, INC., affirmed in part and remand in part 111 f.3d 1506 (10th Cir 1997) the employer's subjective reasoning are not properly consider at the prima facie stage. Plaintiff can make a prima facie showing through credible evidence that a plaintiff was qualified even if the evidence was disputed by the employer, and that this burden may be met through the plaintiffs own testimony and that of a co-worker.

In addition, this court will notice that on the pages that the District Court said Mr. Cooper affirmed the above statement. Mr. Cooper never made such a statement and in fact confirmed his academic training in teaching evaluation process. The court

cannot use false information to rebut Mr. Cooper's prima facie case against the respondent.

II. CONCLUSION

The District Court and the Appeals Court rendered a summary judgment as their decision on this case. The law states that a summary judgment should not be rendered on a case that has established the prima facie test based on circumstantial evidence, and cannot be rendered on a case that has established statements of fact. Mr. Cooper has established statements of fact based upon all the evidence presented in this case. Therefore, thus praying and requesting that the Supreme Court Justices issue a right to be heard, and resend this case back to the lower courts for judgment.

APPENDIX

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604, b.

Submitted April 23, 2001'
Decided April 26, 2001

Before
Hon. FRANK H. EASTERBROOK. *Circuit Judge*
Hon. DANIEL A. MANION, *Circuit Judge*
Hon. DIANE P. WOOD, *Circuit Judge*
No. 99-3914

WENDELL COOPER,

Appeal from the United States
Plaintiff - Appellant, District Court for the
Southern District of Illinois
V.
No. 97 C 4108
MURPHYSBORO BOARD OF EDUCATION, Community Unit School
J. Phil Gilbert, *Judge.*
District No. 186, Jackson County, Illinois,
MICHAEL J. MUGGE, individually and as Superintendent of Murphysboro Community Unit School District No. 186
Defendants-Appellees:

ORDER

Wendell Cooper applied for a position as assistant principal with the Murphysboro Middle School ("MMS") in Murphysboro, Illinois in April 1994. After another applicant was hired, he sued.

After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* Fed. R. App. P. 34(a) the Board of Education ("MBE") and its Superintendent, Michael Mugge', alleging race discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* The district court concluded that Cooper failed to establish a *prima facie* case of race discrimination and granted summary judgment to the defendants. Cooper appeals and we affirm.

A search committee that included Sharon Johnson, the MMS principal; Philip Trapani, the Murphysboro High School principal; and Gary Hartlieb, the district's administrative assistant for curriculum, circulated a vacancy announcement to regional colleges and universities and solicited applications at a minority job fair for the MMS assistant principal position. Eleven individuals applied, and the committee selected five candidates for interviews. Two of the applicants, including Cooper, were black; the rest were white. The school

district selected Cooper for an interview despite questions about his qualifications. In particular, the search committee had concerns whether Cooper was eligible for the Type 75 General Administrative certificate required to hold an administrative position in the school district, or even the two years' prior teaching experience required to be a principal in Illinois.

During Cooper's interview, he acknowledged that he had no knowledge of the teacher evaluation process or state quality assessments. His inexperience was also noted by the interviewers; each interviewer stated independently that Cooper lacked basic knowledge of classroom and school management techniques. In fact, one interviewer noted during Cooper's interview "there is no way [Cooper] could handle this job."

The committee chose to hire Leslie Smith, who is black and who met all the qualifications for the position. Only three days after he accepted the job, however, Smith resigned for personal reasons. By this time, the only candidates from the original, five-person pool who had not withdrawn from consideration were Cooper and another white applicant. The committee decided that neither would be a satisfactory choice and so the committee decided to hire Michael Sullivan, a white internal candidate who had interviewed the year before for an assistant principal position at the high school, and whom Superintendent Mugge knew and recommended.

Cooper then filed a charge of racial discrimination with the Illinois Department of Human Rights. After receiving a right-to-sue letter, he filed suit in federal court in April 1997. By not hiring him as an assistant principal, he alleged, the defendants violated Title VII because (1) the

---

1 Cooper also sued Mugge, who is not a proper defendant because Title VIPs prohibition against discrimination in employment covers only the actions of an "employer." *See* 42 U.S.C. § 2000e-2 (a) (1); *Heinmeier v.Chemetco, Inc., No.* 00-1943, 2001 WL 388931, at *4 (7th Cir. Apr. 18, 2001). In this case, the Murphysboro Board of Education, not Mugge, was Cooper's potential employer. Mugge therefore should have been dismissed from this action on that independent ground. *See Williams v. Banning,* 72 F.3d 552 (7th Cir. 1995) (a Title VII suit must proceed against the employer as an entity rather than against a natural person).

person ultimately hired for the job was white; (2) Cooper was equally or more qualified for the job;
and (3) defendants failed to follow their own hiring standards.

The district court concluded that Cooper failed to establish a *prima facie* case of race discrimination because he had not shown that he was qualified for the assistant principal position

or that the position went to a similarly-situated individual outside the protected class.

The court went on to note that even if it proceeded to a pretext analysis, Cooper had not provided any probative evidence to show that defendants did not honestly pass over his candidacy because of his lack of both classroom experience and qualifications for a Type 75 administrator's certificate in Illinois. Cooper's *pro se* brief on appeal fails to comply with the federal rules; he merely recites a lengthy list of facts followed by a string of case summaries without developing any comprehensible legal arguments. *See* Fed. R. App. P. 28(a). Nevertheless, because we construe *pro se* briefs liberally, *Whitford v. Boglino*, 63 F.3d 527, 535 n.10 (7th Cir. 1995) (per curiam), we shall address the merits of his appeal. Cooper appears to argue generally that the district court erred in determining that he failed to establish either his *prima facie* case or pretext on the part of defendants. To make out a *prima facie* case for failure to hire under the framework articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), Cooper must show that (i) he is a member of a protected class; (ii) he applied and was qualified for a job for which the employer was seeking applicants; (iii) despite his qualifications he was rejected and (iv) the defendants granted the job to someone outside the protected class who had similar or lesser qualifications. *See Flores v. Preferred Technical Group*, 182 F.3d 512, 515 (7th Cir. 1999); *Gonzalez v. Ingersoll Milling Machine Co.*, 133F.3d 1025, 1032 (7th Cir. 1998). Cooper fails to satisfy the second and fourth parts of the *prima facie* test.

In the absence of proof that he could or did meet the Type 75 certificate requirements, he cannot show that he was qualified for the assistant principal position, and the person who was initially hired-Leslie Smith-was a more-qualified member of the protected class. *See Carson v. Bethlehem Steel Corp.*, 82 F.3d 157,158-59 (7th Cir. 1996) (per curiam) ("An employee may be able to show that his
race tipped the scales against him, without regard to the demographic characteristics of his replacement.") - nd, to the extent that Cooper argues that the MBE-,discriminated against him when it ultimately hired Sullivan, a white applicant, Cooper still cannot establish a *prima facie* case.

Although Cooper argues that Sullivan also lacked a Type 75 genera administrative certificate, and was thus similarly or less qualified than he, the record indicates that Cooper was qualified only for a two-year, non-.renewable provisional certificate, whereas Sullivan had completed all course work requirements for the general administrative certificate and was only weeks away from receiving his certificate. Even if Cooper could satisfy his *prima facie* burden, the district court properly observed that Cooper failed to show that the defendants' legitimate, non-discriminatory reasons for not hiring him were a pretext for discrimination. To show pretext, Cooper must demonstrate that the MBE's proffered reason was a lie or completely lacked a factual basis. *Jordan v. Summers*, 205 F.3d 337, 343 (7th Cir. 2000). Even if the reasons for Cooper's non-selection were mistaken, ill considered No. 99-3914 Page 3

person ultimately hired for the job was white; (2) Cooper was equally or more qualified for the job; and (3) defendants failed to follow their own hiring standards.

The district court concluded that Cooper failed to establish a *prima facie* case of race discrimination because he had not shown that he was qualified for the assistant principal position or that the position went to a similarly-situated individual outside the protected class. The court went on to note that even if it proceeded to a pretext analysis, Cooper had not provided any probative evidence to show that defendants did not honestly pass over his candidacy because of his lack of both classroom experience and qualifications for a Type 75 administrator's certificate in Illinois.

Cooper's *pro se* brief on appeal fails to comply with the federal rules; he merely recites a lengthy list of facts followed by a string of case summaries without developing any comprehensible legal arguments. *See* Fed. R. App. P. 28(a). Nevertheless, because we construe *pro se* briefs liberally, *Whitford v. Boglino*, 63 F.3d 527, 535 n.10 (7th Cir. 1995) (per curiam), we shall address the merits of his appeal. Cooper appears to argue generally that the district court erred in determining that he failed to establish either his *prima facie* case or pretext on the part of defendants.

To make out a *prima facie* case for failure to hire under the framework articulated in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), Cooper must show that (i) he is a member of a protected class; (ii) he applied and was qualified for a job for which the employer was seeking applicants; (iii) despite his qualifications he was rejected and (iv) the defendants granted the job to someone outside the protected class who had similar or lesser qualifications. *See Flores v. Preferred Technical Group,* 182 F.3d 512, 515 (7th Cir. 1999); *Gonzalez v. Ingersoll Milling Machine Co., 133* F.3d 1025, 1032 (7th Cir. 1998). Cooper fails to satisfy the second and fourth parts of the *prima facie* test. In the absence of proof that he could or did meet the Type 75 certificate requirements, he cannot show that he was qualified for the assistant principal position, and the person who was initially hired-Leslie Smith-was a more-qualified member of the protected class. *See Carson v. Bethlehem Steel Corp.,* 82 F. 3d 157,158-59 (7th Cir. 1996) (per curiam) ("An employee maybe able to show that his race . . . tipped the scales against him, without regard to the demographic characteristics of his replacement.") And, to the extent that Cooper argues that'-the MBE discriminated against him when it ultimately hired Sullivan, a white applicant, Cooper still cannot establish a *prima facie* case. Although Cooper argues that Sullivan also lacked a Type 75 general administrative certificate, and was thus similarly or less qualified than he, the record indicates that Cooper was qualified only for a two-year, non-.renewable provisional certificate, whereas Sullivan had completed all course work requirements for the general administrative certificate and was only weeks away from receiving his certificate.

Even if Cooper could satisfy his *prima facie* burden, the district court properly observed that Cooper failed to show that the defendants' legitimate, non-discriminatory reasons for not hiring him were a pretext for discrimination. To show pretext, Cooper must demonstrate that the MBE's proffered reason was a lie or completely lacked a factual basis. *Jordan v. Summers*, 205 F.3d 337, 343 (7th Cir. 2000). Even if the reasons for Cooper's non-selection were mistaken, ill considered

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 97-CV-4108-JPG

WENDELL COOPER
Plaintiff,

v.

BOARD OF EDUCATION OF MURPHYSBORO COMMUNITY UNIT SCHOOL DISTRICT NO. 186, JACKSON COUNTY, ILLINOIS, and MICHAEL J. MUGGE, individually and as Superintendent of Murphysboro Community Unit School District No. 186,
Defendants.

JUDGMENT IN A CIVIL CASE

This action came before the Court on a motion for summary judgment After considering the motion and a decision having been duly rendered; IT IS ORDERED AND ADJUDGED that summary judgment shall be GRANTED in favor of the Defendants Board of Education of Murphysboro Community Unit School District No 186, Jackson County, Illinois, and Michael J. Mugge, individually and as Superintendent of Murphysboro Community School District No 186

DATE: OCTOBER, 15 1999.
APPROVED:_____
PHIL GILBERT, CHIEF JUDGE

Before the interviews took place, the committee drafted a list often general questions to ask each candidate. Those ten

general areas included: (1) background; (2) reasons for application; (3) knowledge of quality review and state assessments; (4) teacher evaluations; (5) philosophy of discipline; (6) steps a teacher should take before sending a student to the principal; (7) understanding of early adolescents; (8) parent involvement; (9) organizational skills; and (10) motivation of certified and non-certified individuals. Johnson Aff. 2-3. The interviewers asked all interviewees these same general questions. Trapani Dep, p. 21-Following and during the general questioning, committee members also would probe candidates more specifically on various issues, but usually focusing on the ten general areas. Id.

During Cooper's interview, he acknowledged that he had no knowledge of the teacher evaluation process, quality review, or state assessments. Cooper Dep.. pp. 108-109, 115-117; Trapani Dep., pp. 18-25. In addition, several of the interviewers stated that. while he appeared very personable and warm. Cooper lacked basic knowledge of classroom and school management techniques, including discipline. Johnson Aff. H 3-4; Hartlieb Aff. U 3; Trapani Dep., pp. 22-24. The candidate that impressed the committee the most was Leslie Smith, an African-American, who was eventually offered the position by Johnson on June 14, 1994. Johnson Aff. 4. He accepted on June 17, 1994, but on June 20, telephoned Johnson to say that due to personal and family reasons, he would be unable to take the job. Johnson Aff. ^ 4. All candidates but Cooper and a Caucasian had by then withdrawn their applications. Ultimately, the MSD hired an internal candidate, Michael W. Sullivan, who had been interviewed the year

before for the job of assistant principal at the high school and who was very familiar to Mugge. Johnson interviewed Sullivan and recommended his hiring to the MBE, which hired Sullivan on June 30, 1994. Johnson Aff. 4. after failing to get the job. Cooper filed a Charge of Discrimination with the Illinois Department of Human Rights, alleging race discrimination. He received a Right to Sue letter and filed suit in federal court on April 14, 1997 (doc. 1). Plaintiff alleges that the defendants violated Title VII of the Civil Rights Act of 1967, 42 U. S. C. §2000, when they failed to hire him as assistant principal for the MSD. The plaintiff makes several allegations in his complaint to support his claim of race discrimination, including that: (1) the-person-ultimately hired for the job was white; (2) the plaintiff was equally or better qualified for the job, (3) Superintendent Mugge had told Cooper that Cooper was the most qualified applicant for the job; (4) defendants offered the job to one or more persons who did not meet the qualifications; and (5) defendants failed to follow their own hiring standards as well as state law when they did not hire Cooper.

II Analysis

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R-Civ.P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The reviewing court must

construe the evidence in the light most favorable to the nonmoving party and draw all justifiable inferences in favor of that party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Oatesv. Discovery Zone, 116 F.3d 1161. 1165 (7th Cir. 1997). Once the moving party has produced evidence to show that it is entitled to summary judgment, the party seeking to avoid such judgment must affirmatively demonstrate that a genuine issue of material fact remains for trial. Johnson v. City of Fort Wayne, 91 F.3d 922, 931 (7th Cir. 1996).

In responding to a summary judgment motion, the nonmoving party may not simply rest upon the allegations contained in the pleadings. "The object of [Rule 56(e)] is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit. "Lujan v. National Wildlife Fed'n, 497 U.S. 871, 888, 110 S. Ct. 3177, 111 L.Ed.2d 695 (1992). Moreover, a genuine issue of material fact is not shown by the mere existence of "some alleged factual dispute between the parties," Anderson, 477 U.S. "at 247, or by "some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L.Ed. 2d 538 (1986). Rather, a genuine issue of material fact exists only if "a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented." Anderson, 477 U.S. at 252; see also LINC Finance Corp. v. Onwuteaka, 129 F.3d 917, 920 (7th Cir. 1997). The non-movant may not rely upon mere allegations, but must present facts to show that a genuine issue of material fact exists. Celotex, 477 U.S. at 322-26, 106 S.Ct. at 2552-54; Fed.RCiv.P. 56 (e).

There are two ways in which a plaintiff can avert summary judgment for the defendant in
an employment discrimination case: by producing sufficient evidence of the employer's liability through either direct or indirect methods. Crim v. Board of Education of Cairo School Dist. No.1, 147 F.3d 535. 540 (7th Cir. 1998). Mr. Cooper did not successfully utilize either method.

The direct method uses direct or circumstantial evidence to create a triable issue of fact that the employer had a discriminatory motive when taking adverse employment action against the plaintiff, i.e., the employer did not hire the employee because of the protected group to which he belongs. Id. This most often involves evidence of statements made by the prospective employer, which reveal his intent to discriminate, and is not pertinent to the instant case. Cooper did not provide any direct or circumstantial evidence that race was a determining factor in the MSD's decision to not hire him.

The second (and more common) way is to utilize the indirect, burden-shifting approach for Title VII cases originally set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 93 S. Ct 1817, 36 L.Ed .2d 668 (1973). The Court will analyze Cooper's claims of race discrimination under this approach.

To survive a summary judgment motion under the McDonnell Douglas burden-shifting approach, a plaintiff must first establish a prima facie case of discrimination by showing that he (1) is a member of a protected class; (2) met the job's

qualifications; (3) endured an adverse employment action (e.g., was not hired); and (4) was treated less favorably than similarly situated employees. McDonnell-Douglas at 802; Crim v. Board of Education of Cairo School Dist. No. 1, 147 F.3d 535, 540 (7th Cir. 1998).

If the plaintiff establishes a prima facie case, a rebuttable presumption of discrimination is produced, and the burden of production shifts to the employer to articulate a legitimate, nondiscriminatory reason for the discharge. Crim, 147 F.3d at 540; Bahl v. Royal Indemnity Co., 115 F.3d 1283, 1290 (7th Cir. 1997). If the employer is successful, the presumption dissolves, and the burden shifts back to the employee to show that the employer's proffered reasons are a pretext for race discrimination. Id. It is at this point that plaintiffs are very vulnerable to losing on a summary judgment motion. The defendant's motion will be granted if the plaintiff does not produce to the Court sufficient evidence to sustain a reasonable inference that the employer's articulated reason is not the real reason for the discharge, but instead is a pretext, or cover-up, for unlawful discrimination. Bahl, 115 F.3d at 1290; Russell v. Acme-Evans Co., 51 F.3d 64, 68 (7th Cir. 1995). In other words, the plaintiff must show to the Court that it is reasonably likely that the defendant is lying about the reason for the failure to hire; otherwise, the defendant will prevail in his motion for summary judgment.

In a suit alleging race discrimination, "[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the

plaintiff.'" Crim, 147 F.3d at 540 (quoting St. Mary's Honor-Ctr: v. Hicks, 509 U.S. 502, 507, 113 S.Ct. 2742, 125 L.Ed. 2d 407 (1993)(quoting Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253, 101 S. Ct. 1089, 67 L.Ed. 2d 207 (1981))). In short, the employee bears the burden of showing that the employer's reason for the dismissal was a lie (Russell, 51 F. 3d at 68) or had no basis in fact. Russell, 51 F.3d at 68; see Johnson v. City of Fort Wayne, 91 F.3d 922 931 (7th Cir. 1996). "It is not sufficient to prove that the reason was doubtful or mistaken." Crim, 147 F.3d at 541; Russell, 51 F.3d at 68 (explaining that "pretext" does not mean simply a" mistake," but rather "a lie, specifically a phony reason for some action")

In other words, even if the MBE's reasons for not hiring Mr. Cooper were wrong or foolish, Cooper has not established that those reasons were pretextual if the MSD provides the Court with evidence that they honestly believed in their reasons for not hiring him. Crim, 147 F.3d at 541; see Brill v. Lante Corp., 119 F.3d 1266, 1270 (7th Cir. 1997); Pollard v. Rea Magnet Wire Co., 824 F.2d 557, 559 (7th Cir.), cert. denied, 484 U.S. 977, 108 S.Ct. 488, 98 L.Ed.2d 486 (1987). "Because a Title VII claim requires intentional discrimination, the pretext inquiry focuses on whether the employer's stated reason was honest, not whether it was accurate. "Holland v. South Bend Community Sch. Corp., 93 F.3d 327, 330 (7th Cir. 1996), cert. denied, 519 U.S. 1072, 1117S.Ct.769, 136 L.Ed.2d 715 (1997).

Therefore, for this case, whether or not Mr. Cooper actually met or could have met the qualifications for the assistant principal's job is irrelevant if the MSD honestly believed that

Cooper did not and could not meet those qualifications. See Johnson v. University of Wisconsin-Eau Claire, 70 F.3d 469, 481 (7th Cir.1995) (concluding that neither plaintiff's subjective belief of her own qualifications nor her disagreement with her employer's business decision raises a material dispute about the employer's honesty its asserted reason for the decision).

A. Race discrimination under Title VII

Title VII prohibits employers from refusing to hire or from discriminating against individuals based on their race. 42 U.S.C. §2000e-2(a)(l). To establish a prima facie case of race discrimination under Title VII for failure to hire, the plaintiff must produce evidence to show that: (1) he is a member of a minority; (2) he applied for and was qualified for the job in question; (3) despite his qualifications, the employer rejected him; and (4) the defendant granted the job to a similarly-situated person outside the protected class who had similar or lesser qualifications. Johnson v. Zema Systems Corp., 170 F.3d 734, 742-43 (7th Cir. 1999); Gonzalez v. Ingersoll Milling Machine Co., 133 F.3d 1025, 1032 (7th Cir. 1998). To defeat summary judgment on the prima facie case, Cooper need only demonstrate that there is a genuine issue of material fact regarding these prima facie factors. Stalter v. Wal-Mart Stores, Inc., 1999 WL 773539, 3-4 (7th Cir. 1999).

If Cooper cannot and does not offer proof establishing all of the prima facie elements, his complaint cannot survive summary judgment. Hongv. Children's Memorial Hosp., 993 F.2d 1257, 1263 (7th Cir. 1993). In addition, he must provide the Court with sufficient evidence (other than his own conjecture) that race was the dispositive factor in the defendants' hiring decision. See Rush v. McDonald's Corp., 966 F.2d 1104, 1112-13 (7th Cir. 1992); see also Karazanos v. Navistar Intern. Transp. Corp., 948 F.2d 332, 337 (7th Cir.1991) ("A party to a law suit cannot ward off summary judgment with an affidavit or deposition based on rumor or

conjecture."). The Court finds that Cooper fails in both these regards.

Mr. Cooper's complaint fails because he has not established two of the four elements necessary for a prima facie case. He has not shown that he was objectively or subjectively qualified for the position, and he has not shown (and cannot show) that the MSD hired a non-minority who had the same or lesser qualifications than Cooper. The Court finds that the MSD's decision to hire Michael Sullivan is irrelevant to this complaint. At the time the school district was initially considering the applicants for this job, they interviewed several candidates, including Mr. Cooper. From this pool of applicants, the MSD chose Leslie Smith - an African-American, who accepted the job on June 17, 1994. The fact that Mr. Smith later resigned that position for personal reasons, and the board hired a non-minority does not give rise to a constitutional claim of race discrimination under Title VII. The MSD initially rejected Mr. Cooper's application in favor of another minority candidate. The Court finds that it is this initial rejection that is and must be the subject of this suit.

Absent some compelling evidence that would lead this Court to believe that the Murphysboro School District initially hired a minority candidate, Mr. Smith, as some kind of subtle subterfuge for race discrimination, the Court will not consider nor discuss the circumstances surrounding the board's later hiring of Michael Sullivan. Mr. Cooper's response to the summary judgment motion hints that somehow the board hired Smith knowing he was not qualified. If Mr. Cooper is

attempting to convince the Court that, even if that were true, it somehow amounts to a constitutional violation, the argument fails utterly. Whether or not the MSD hired Mr. Smith wrongly, illegally or carelessly is irrelevant to this suit. The Court does not sit as a "super school board" to second-guess hiring decisions for either teachers or administrators. The only concern of this Court for the instant complaint is whether or not Mr. Cooper can establish all of the elements of a constitutional violation. The Court finds that he cannot. In addition, the Court finds that Mr. Cooper cannot establish that he met the MSD's qualifications for this position. The plaintiff did not provide this Court with proof that he could or did meet the Type 75 certification requirements prior to Smith's hiring. The exhibit attached (Pl.'s Exhibit 6 to response to summary judgment motion) is undated and obviously was sent to a Superintendent "Desimone" from some unknown school district; the Court, in fact, questions its applicability to this suit, given the statement within it that reads "[the applicant must meet the requirements for the certificate on or before 5/1/9T" This suit involves a hiring decision made in late spring/early summer of 1994. Mr. Cooper does not establish to the Court that at the time his application was rejected he possessed the necessary qualifications for this administrative certification.

The Court also notes significantly that Cooper's eligibility (or not) for this particular certification is not dispositive in this case anyway. The MSD had in place and utilized a standard set of other, more subjective qualifications, which it reasonably expected the successful candidate to meet. The interviewers

asked each candidate a series of questions (outlined above) designed to elicit from the applicant his or her knowledge of school procedures and policies as well as that applicant's own personal style and philosophy of education and discipline. The record is uncontradicted that several, if not all, of the interviewers reasonably believed that Mr. Cooper failed to give satisfactory answers to these and other questions during his interview. Mr. Cooper does not address his alleged deficiencies in these areas at all in his response to the summary judgment motion nor in any other documents submitted to support his position. The Court finds that it is undisputed that Mr. Cooper did not possess nor meet all of the effective or subjective qualifications for the position of assistant principal.

Even if, however, the Court accepted that Cooper had made out a bare minimum prima facie case for disparate treatment because of race discrimination, he must do more to survive a motion for summary judgment. He must, and he has failed to, create a triable question of pretext under the Celotex-Liberty Lobby-Matsushita summary judgment trilogy. If a plaintiff attempts to defend against a summary judgment motion by attacking the potential employer's stated, legitimate reason for not hiring him, the plaintiff must provide sufficient evidence that the employer's articulated reason is false, so that a reasonable fact finder could conclude that the employer intentionally discriminated against him because of his race. See Anderson, 13 F. 3d at 1124 (affirming summary judgment for the employer and ruling that to defeat the employer's summary judgment motion, the plaintiff need not offer

evidence of the employer's "true" reason, but he must offer sufficient and substantially probative evidence that the employer's articulated legitimate reason is false.) This Cooper has not done.

Defendants have articulated very specific, legitimate reasons for their decision to hire someone besides the plaintiff. They have supported their asserted reasons with affidavits and evidence. Cooper has not provided this Court with any substantially probative evidence, except for a substantial amount of speculation, to show that MSD's articulated reasons are a pretext for intentional race discrimination.

The Court reiterates its earlier explanation that it is irrelevant whether or not Mr. Cooper actually could or did later meet the objective qualifications for a Type 75 administrator's certificate in Illinois (and he has not provided sufficient evidence to the Court on this subject). Various members of the interview committee as well as Superintendent Mugge himself testified that they believed Cooper's lack of actual classroom experience would preclude him from qualifying for that certification. Cooper himself does not contradict that these individuals honestly believed that he was not qualified for a Type 75 certificate. And as stated earlier, Mr. Cooper does not even address the defendants' more subjective, non-discriminatory reasons for not hiring him, such as his philosophy of discipline, his lack of familiarity with basic classroom management techniques, quality review and school assessment procedures, etc.

Even if Cooper had established that he met the Type 75 certificate qualifications and that the decision makers knew that he had, he still would not prevail on summary judgment because of the other, reasonable, non-discriminatory and uncontradicted reasons the school district articulated for not hiring him. See Russell, 51 F. 3d at 69 ("The fact that some of these reasons were successfully called into question by [the plaintiffs] deposition or affidavit does not defeat summary judgment if at least one reason for each of the actions stands unquestioned."); see also Wolfv. Buss (America) Inc., 77 F.3d 914, 920 (7th Cir.1996) (establishing that, when an employer gives many reasons for termination, the employee "must raise an issue of fact regarding each of the reasons proffered for his dismissal or suffer the affirmance of the district court's grant of summary judgment."). Mr. Cooper does not at all convince the Court that the defendants' reasons for hiring another candidate were a pretext for race discrimination.

Even if MSD had been incorrect or careless in its beliefs and conclusions about Mr. Cooper, he would not necessarily prevail in a claim for race discrimination. Employers may hire employees for an infinite number of reasons, some good, some wrong-headed or thoughtless, but even the thoughtless hiring's do not automatically offer that job applicant the protections of the Title VII.

Courts in general, and this Court in particular, are not in the business of second-guessing or overturning any employer's business and educational decisions and judgments, even if those decisions are carelessly made, foolish or even morally

objectionable, as long as those decisions do not intrude on the potential employee's statutory or constitutional rights. See Billups v. Methodist Hosp., 922 F.2d 1300, 1304, (7th Cir. 1991). Cooper fails to demonstrate that a genuine issue of material fact remains in his claim for race discrimination. A to prevail on this summary judgment motion, he must provide sufficient evidence that the school district is lying about its real reason for nor hiring him. Cooper did not provide this Court with such evidence.

B. Summary

Plaintiff Cooper fails to meet his burden of establishing even a prima facie case of age discrimination, so the Court does not have to consider the McDonnell-Douglas burden-shifting analytical framework. Even if the Court were to analyze his claim under McDonnell-Douglas, however, the claim fails miserably, as Cooper provides the Court with little or no evidence that the school district's asserted, legitimate reasons for not hiring him are a pretext for race discrimination.

U.S.C. § 1254 cases may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree.

United States Court of Appeals for the Seventh Circuit Decision of April 26, 2001, to Affirm District Court summary judgment decision for Appellees

United States District Court for the Southern District Decision of October 15, 1999, to Grant Summary Judgment for the Defendant

CONSTITUTION AMENDMENT XIV

Article-XIV Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United Sates and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life; liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2000e. (A) (1) (2) A. It shall be an unlawful employment practice for an employer

(1) To fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way, which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Federal Civil Procedure 56(2547) When deciding whether to grant summary judgment the district court must view the evidence in the light most favorable to the party resisting the motion

Federal Civil Procedures 56(2544) Summary judgment movant bears the burden of proof and all reasonable doubts as to existence of the genuine issue of material fact must be resolved against him.

Federal Civil Procedure 56(2465) Fact that it appears that the nonmovant is unlikely to prevail at trial or that mover's facts appear more plausible are not reasons to grant summary judgment.

Federal Civil Procedure 56(2523) On summary judgment motion the trial court has no duty to decide factual issues, but only whether there is an issue of fact to be tried. Fed.

Civil Rights (44) 1 Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq. Plaintiff may meet his initial burden in proving race discrimination under equal employment opportunity provisions of Civil Rights Act of 1964, simply by offering evidence adequate to create inference that employment decision was based on discriminatory criterion illegal under the Act, i.e., evidence indicating that it was more likely than not that employer's actions were based on unlawful considerations.